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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/567,960

Filing Date: September 11, 2006

Appellant(s): BAUER ET AL.

James E. Howard
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/5/2009 appealing from the Office action mailed 03/24/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, and judicial proceedings which may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Simmons et al. WO 03/012350 02-2003

Fumagalli EP 0845643 03-1998

Kahler US 6745588 06-2002

Holzer et al. US 2002/0014086 02-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 12-14, 16, and 20-21** are rejected under 35 U.S.C. 102(b) as being anticipated by Simmons et al. (WO03/012350).

Regarding claim 12, Simmons teaches a refrigerating appliance (100) comprising a heat-insulating housing (130; Page 6, lines 14-16) and a cooling circuit including an evaporator (590), a compressor (560) and a condenser (570), a first assembly (150) including at least the housing and the evaporator; a second assembly (140) mounted remotely from the first assembly and separated therefrom by a spacing zone (see annotated figure below), said second assembly including at least the compressor (Page 6, line 34 – Page 7, line 3); and a coupling assembly (all couplings 330 shown in Fig. 2) extending across the spacing zone between the first and second assembly for movement of refrigerant therethrough (Page 8, lines 9-10 and lines 33-34).

Regarding claim 13, Simmons teaches the invention as recited above and further teaches in Fig. 2 including a coupling (330) disposed in a coolant pipe (220) connecting the first assembly and the second assembly (Page 8, lines 9-10 and lines 33-34).

Regarding claim 14, Simmons teaches the invention as recited above and further teaches in Fig. 2 (see annotated Figure 2 below) the refrigerating appliance wherein the coupling (330)

including a first coupling portion capable of being attached to the first assembly (150) and a second coupling portion attached to the second assembly (140), the two coupling portions are self-closing in the uncoupled state allowing the first assembly and the second assembly to be detachably separable from one another (Page 8, line 33-Page 9, line 5) for remote mounting of said first assembly and said second assembly separated by said spacing zone.

Regarding the recitation "for remote mounting of said first assembly and said second assembly separated by said spacing zone", it has been held that the recitation with respect to the matter in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex part Marsham*, 2 USPQ2d 1647 (1987).

Regarding claim 16, Simmons teaches the invention as recited above and further teaches in Fig. 2 the refrigerating appliance including the condenser (570 included in the cold producing unit 210) being part of the second assembly (140) (Page 12, lines 28-29).

Regarding claim 20, Simmons teaches in Figs. 1 and 2 an assembly for a refrigerating appliance, comprising: a heat-insulating housing (130; Page 6, lines 14-16); an evaporator (590); and at least one coupling portion (330) from which at least one of an inlet or drain pipe (220) for a coolant extends to the evaporator (cold producing unit (210); Fig. 2; Page 12, lines 28-29).

Regarding claim 21, Simmons teaches in Figs. 1 and 2 an assembly for a refrigerating appliance, comprising a compressor (560 in cold producing unit 210; Page 12, lines 28-29) and at least one of a suction or pressure pipe (220) for a coolant, the suction pipe or the pressure pipe extends between the compressor and a coupling portion (330).

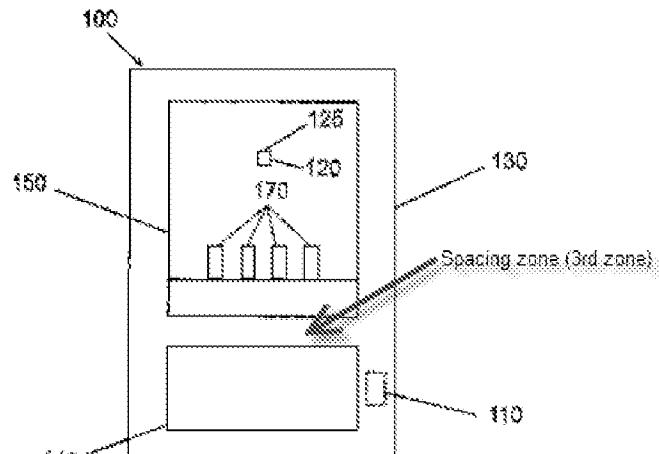


Fig. 1

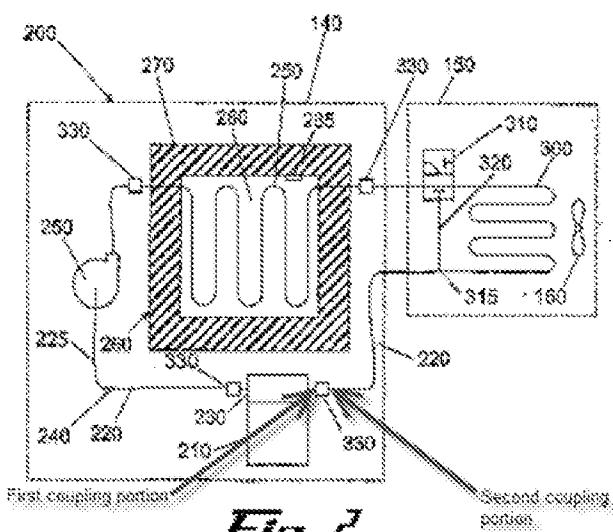


Fig. 2

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. **Claim 15** is rejected under 35 U.S.C. 103(a) as being anticipated by Simmons et al. (WO03/012350) in view of Fumagalli (EP0845643).

Regarding claim 15, Simmons teaches the invention as recited above but fails to teach that the refrigerating appliance includes the second assembly provided with forced ventilation.

However, Fumagalli teaches in Fig. 1 a refrigeration system with variable forced ventilation. Fumagalli further teaches that forced air circulation may be used to prevent the formation of temperature gradients in the cooled compartment resulting in a more uniform temperature (Col. 1; lines 36-39).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Simmons by including a forced ventilation system in order to provide a more uniform temperature as taught by Fumagalli.

6. **Claim 17** is rejected under 35 U.S.C. 103(a) as being anticipated by Simmons et al. (WO03/012350) in view of Kahler (US 6745588).

Regarding claim 17, Simmons teaches the invention as recited above but fails to teach the coolant pipe together with a condensation water pipe is guided in a line and including a coupling disposed in the condensation water pipe.

However, Kahler teaches an equivalent technique in Fig. 2b of incorporating a flexible coolant interface (48) and a flexible drain interface (50). Kahler teaches that the flexible drain interface (50) communicates between the display portion (20) and the drainage reservoir in base portion (40; Col. 4; lines 47-50). Kahler further teaches that this configuration creates a degree of independence between the base portion (40) and display portion (40) so that the display portion (40) is adjustably moveable relative to the base portion without being impeded by, or interfering, with the refrigerant or cooling piping and/ or drainage piping (Col. 4; lines 52-58). A person of ordinary skill in the art at the time of invention would recognize that the technique taught by Kahler is an equivalent to the technique as claimed because they both allow drain and refrigerator piping to be conveniently adjusted relative to the location of the modular units of the refrigerating device.

Therefore, it would have been obvious to modify the device of Simmons to include the coolant pipe together with a condensation water pipe guided in a line and including a coupling disposed in the condensation water pipe for convenient adjusting of the piping relative to the location of the modular refrigerator housing in view of the teaching by Kahler.

7. **Claims 18, 19, and 22** are rejected under 35 U.S.C. 103(a) as being obvious over Simmons et al. (WO03/012350) in view of Holzer et al. (US2002/0014086).

Regarding claim 18, Simmons teaches the invention as recited above but fails to teach wherein the refrigerating appliance includes a kitchen furniture arrangement including a base zone and wherein the second assembly is accommodated in the base zone.

However, Holzer teaches in Figs. 1 and 2 a refrigerating appliance (11) built into kitchen furniture (10) having a base zone (28) containing a refrigeration assembly (0021, lines 23-27). Holzer further teaches that such a base construction makes it possible to tune the width of the condenser, for example, to the width of the air supply aperture, whereby the condenser is cooled rather intensively, in turn, enhancing the effectiveness of the cooling system (0010).

A person of ordinary skill in the art at the time of invention would recognize that incorporating the refrigeration appliance into kitchen furniture increases aesthetic appeal while providing protection of the essential refrigeration elements such as a condenser, fan, and compressor.

Therefore, it would have been obvious to a person of ordinary skill in the art to modify the device of Simmons to include a kitchen furniture arrangement with the second assembly in the base zone to enhance the effectiveness of the cooling system while increasing aesthetic appeal in view of the teaching by Holzer.

Regarding claim 19, Simmons as modified above teaches the invention as claimed and Holzer further teaches in Fig. 1 the kitchen furniture arrangement including at least one compartment (18), first assembly and second assembly (25 and 28) being separated by the at least one compartment of the kitchen furniture arrangement.

Regarding claim 22, Simmons teaches a method capable of installing a refrigerating appliance in furniture, comprising the following steps: installing a first assembly (150) of the

refrigerating appliance, including at least one heat-insulating housing (130; Page 6, lines 14-16), an evaporator and a coolant pipe (220), in a first zone of the appliance (150); installing a second assembly (140) including at least one compressor in a second zone (Page 6, line 34 – Page 7, line 3) of the appliance; the first zone (150) being separated from the second assembly (140) by a third zone (see annotated Fig. 2) with the third zone being devoid of the first assembly and second assembly; and connecting connections (330) of said coolant pipe of said first assembly to corresponding connections of said second assembly (Fig. 2), with the coolant pipe spanning the distance between the first and second assembly.

Simmons fails to teach that the refrigerating appliance is installed in furniture.

However, Holzer teaches the technique of installing a refrigerating appliance in kitchen cabinetry. A person of ordinary skill in the art at the time of invention would recognize that incorporating the refrigeration appliance into kitchen cabinets increases aesthetic appeal while providing protection of the essential refrigeration elements such as a condenser, fan, and compressor without occupying additional kitchen floor space.

Therefore, it would have been obvious to modify the technique of Simmons to include the technique of installing the refrigerating appliance in furniture in order to increase the aesthetic appeal of the device in view of the teaching of the technique by Holzer.

(10) Response to Argument

The Appellant's arguments filed 08/05/2009 have been considered, but they are not persuasive.

A. Summary of the Appellant's arguments:

On page 6 of the Appellants' brief, the Appellant contends that claims 12-14, 16, and 20-21 are not anticipated under 35 U.S.C. 102(b) by the Simmons et al. reference (WO 03/012350). Appellant specifically argues on page 7, paragraph 4 that the Simmons references very clearly fails to disclose at least a first assembly including at least said housing and the evaporator; a second assembly mounted remotely from the first assembly and separated therefrom by a spacing zone, the second assembly including at least said compressor; and a coupling assembly extending across said spacing zone between the first assembly and the second assembly for movement of refrigerant therethrough, as recited in independent claim 12. Appellant further asserts on page 8, paragraph 2 that in stark contrast, the Simmons et al. reference discloses an insulated frame (130) that includes both the alleged first assembly 150 and the alleged second assembly 140. Since the first assembly 150 and the alleged second assembly 140 are part of the insulated frame 130, the second assembly very clearly is not, and cannot be, remote from the first assembly 150, which includes the insulated frame 130.

Appellant contends on pages 9-10 of the brief the rejection of claim 15 under 35 U.S.C. 103(a) arguing that the Fumagalli reference does not remedy the deficiencies of the Simmons et al. references, and respectfully requests reversal of the rejection.

Appellant contends on page 11 of the brief the rejection of claim 17 under 35 U.S.C. 103(a) arguing that the Kahler reference does not remedy the deficiencies of the Simmons et al. references, and respectfully request reversal of the rejection. Appellant further asserts on page 12, that the Office Action does not establish an adequate rationale for making such a combination instead making a conclusory statement using Appellants' invention as a template through hindsight reconstruction of the Appellant's claims.

Appellant contends on page 14 of the brief the rejection of claims 18, 19, and 22 under 35 U.S.C. 103(a) arguing that the Holzer reference does not remedy the deficiencies of the Simmons et al. references, and respectfully requests reversal of the rejection.

B. Response to the Appellant's arguments:

In response to the Appellant's argument regarding the Simmons et al. reference, Simmons teaches the features of the claimed invention including the heat insulated housing (130); a cooling circuit including an evaporator (590), a compressor (560) and a condenser (570) a first assembly (150) including at least the housing and the evaporator; a second assembly (140) mounted remotely from the first assembly and separated therefrom by a spacing zone, the second assembly including at least the compressor and a coupling assembly (all couplings 330) extending across the spacing zone between the first and second assembly for movement of refrigerant therethrough.

To clarify, Simmons teaches on page 6, lines 14-18 that the refrigerated device (100) may have an outer insulated frame (130) and the insulated frame (130) may include a refrigeration deck area (140) and a refrigerated compartment (150). From Simmons' disclosure, it is implicitly taught that both the refrigeration deck area (140) and the refrigerated compartment (150) include at least portions of the outer insulated frame (130), or housing. In turn, referring to Fig. 1 and based on the disclosure, the Examiner interprets the entire assembly (100) to be essentially made up of three portions: the first assembly defined as the entire upper portion of the assembly (100) including compartment (150) and all portions of the housing (130) in line with and above the bottom horizontal surface of compartment (150); the second assembly including the entire lower portion of the assembly (100) immediately below the top horizontal

surface of the compartment (140) and all portions of the housing (130) in line with and below the top horizontal surface of the compartment (140), and the spacing zone including all of the structure immediately between the first and second assemblies as defined above. Furthermore, the claim language as currently presented merely requires that the first assembly includes at least the housing, not the entire housing. Therefore, since the first assembly (150) includes the housing (130), even if just a portion as explained above, the first assembly (150) taught by the Simmons reference meets the requirements of the first assembly claimed in independent claim 12 as required.

Regarding the second assembly (140) the Examiner again interprets the second assembly as including the entire lower portion of the assembly (100) immediately below the top horizontal surface of the compartment (140) and all portions of the housing (130) in line with and below the top horizontal surface of the compartment (140) for the reasons as discussed above. As stated in the Final Office Action, the Examiner presumes the word *remotely* to mean *situated at some distance away*. Therefore, referring to Fig. 1 it is understood that the second assembly as defined above is mounted remotely, or at some distance way, from the first assembly. Although both the first and second assemblies include portions of the housing (130), that does not negate the fact that the assemblies as defined above are indeed mounted remotely from one another by way of the spacing section as illustrated in the annotated Fig. 1 in the Final Office Action and as further defined for clarity above.

The Examiner would also note for clarity that the evaporator (590) illustrated in the embodiment shown in Fig. 13 corresponds with the heat exchanger (300) illustrated in Fig. 2. A person of ordinary skill in the art would recognize that an evaporator is a heat exchanger.

Therefore, it is clearly understood based on Figs. 2 and 13 along with the disclosure that the first assembly includes the evaporator (590/300).

Therefore, Simmons et al. discloses all of the limitations of independent claim 12 as explained above. As such, for at least these reasons, the Examiner respectfully submits that the argument is not persuasive.

In response to the Appellants argument in regard to claim 15 that the Fumagalli reference does not remedy the deficiencies of the Simmons et al. references, the Simmons reference meets the limitations of independent claim 12 for at least the reasons explained above. Furthermore, the Appellant notes on page 9, paragraph 6 of the brief that Office Action does not rely on the Fumagalli reference to remedy the deficiencies of the Simmons et al. reference. As such, for at least these reasons, the Examiner respectfully submits that the argument is not persuasive. The Examiner notes for clarity a typographical error in the rejection of claim 15 that cites the claim as being *anticipated* by Simmons et al. in view of Fumagalli. However, the inclusion of the recitation of the basis for all 103(a) obvious rejections along with the obvious statement recited on page 7 of the Office Action clearly illustrates that the rejection of claim 15 is an *obvious* type rejection rather than an anticipation type rejection.

In response to the Appellants argument in regard to claim 17 that the Kahler reference does not remedy the deficiencies of the Simmons et al., the Simmons reference meets the limitations of independent claim 12 for at least the reasons explained above. Regarding the Appellant's assertion that the Office Action does not establish an adequate rational and arrived at the claimed invention through hindsight reconstruction, the Examiner respectfully disagrees.

In accordance with section 2144 of the MPEP, the rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In this particular instance, the motivation of "convenient adjusting of the piping relative to the location of the modular refrigerator housing in view of the teaching by Kahler" as cited in the Office Action is not conclusory; the rationale has been reasoned from knowledge generally available to one of ordinary skill in the art in view of a prior art reference in accordance with the standards set forth in the MPEP. Specifically regarding the Appellant's allegation of hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time of invention, and does not include knowledge only gleaned from the Appellant's disclosure such reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

As such, for at least these reasons, the Examiner respectfully submits that the argument is not persuasive.

In response to the Appellants argument in regard to claims 18, 19, and 22 that the Holzer et al. reference does not remedy the deficiencies of the Simmons et al., the Simmons reference meets the limitations of independent claim 12 for at least the reasons explained above.

As such, for at least these reasons, the Examiner respectfully submits that the argument is not persuasive.

For the above reasons, it is believed that the rejections of claims 12-22 should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Lakiya Rogers/

Examiner, Art Unit 3744

Conferees:

/Cheryl J. Tyler/
Supervisory Patent Examiner, Art Unit 3744

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